

Mentally Ill Individuals Act.

2.39. Qualified. -- The capacity of a person who is licensed, certified or registered to perform a duty or a task in accordance with applicable State law and other accrediting bodies.

2.40. Regulatory Grouping. -- A set of directly-related regulatory requirements.

2.41. Repeat Deficiency. -- A deficiency that: 1) is cited on the current inspection and, 2) was cited on the previous inspection or any intervening inspection between the current inspection and the previous inspection and, 3) has had a plan of correction submitted for the previous inspection or any intervening inspection that was accepted by the director and, 4) is cited based on the same regulatory grouping.

2.42. Resident Council. -- A group of residents having the right to meet as a group and to express grievances in relation to the residents= well-being in general and to make recommendations concerning nursing home policies and procedures.

2.43. Restraint. -- Any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident=s body that the person cannot remove at will and which restricts freedom from movement or normal access to one=s body, or any drug used to limit movement by a resident or to limit mental capacity of a resident beyond the requirements of therapeutic treatment.

2.44. Routine Dental Service. -- A service consisting of an annual inspection of the oral cavity for signs of disease, diagnosis of dental disease, dental radiographs as needed, dental cleaning, fillings, minor dental plate adjustments, smoothing of broken teeth, and limited prosthodontic procedures such as impressions of dentures and fitting of dentures.

2.45. Secretary. -- The Secretary of the Department of Health and Human Resources.

2.46. State Board of Review.-- A board designated by State law through which a resident may appeal a discharge from a nursing home.

2.47. Standard Quality of Care. -- Substantial compliance with this rule.

2.48. Transfer. -- Moving the resident from the nursing home to another legally responsible institutional setting.

2.49. Treatment. -- Care provided for the purposes of maintaining and or restoring health, improving functional levels, or relieving symptoms.

'64-13-3. State Administrative Procedures.

3.1. General Licensure Provisions.

3.1.a. No person may establish, operate, maintain, offer or advertise a nursing home as defined in this rule within the State of West Virginia unless that person obtains a valid license.

3.1.b. A separate license is required for nursing homes maintained or operated on separate premises even though maintained or operated under the same ownership or management.

3.1.c. Separate buildings on the same premises, operated under the same ownership and management, are one (1) nursing home unless the director determines otherwise.

64CSR13

3.1.d. A license is valid only for the premises and persons named in the application.

3.1.e. A license is not transferable or assignable and shall be surrendered on demand to the director.

3.1.f. If the ownership of a nursing home with a valid unexpired license changes, the new owner shall apply for a new license.

3.1.g. The application for a license by the new owner has the effect of a valid license for three (3) months from the date the application is received by the director.

3.1.h. The nursing home shall obtain approval from the director prior to changing the name of the nursing home.

3.1.i. An approved name change is reflected in a newly issued license at a charge of fifty dollars (\$50.00).

3.1.j. The words "clinic," "hospital," "sanitarium," or any other word that suggests a type of institution other than the proposed or existing nursing home shall not appear in the name.

3.1.k. A license shall state:

3.1.k.1. The name of the nursing home to which it applies;

3.1.k.2. The name of the applicant who is the licensee;

3.1.k.3. The maximum bed capacity for which it is granted;

3.1.k.4. The date of issuance; and

3.1.k.5. The expiration date.

3.1.l. The name on the license shall be that used in the application which specifically identifies the nursing home.

3.2. Exceptions.

3.2.a. Nothing contained in this rule applies to:

3.2.a.1. A hospital as defined in W. Va. Code ' 16-5B-1;

3.2.a.2. Institutions as defined in W. Va. Code ' ' 27-1-6 and 25-1-3;

3.2.a.3. A federally operated institution;

3.2.a.4. Institutions operated for the care and treatment of alcoholic patients;

3.2.a.5. Offices of physicians;

3.2.a.6. Hotels;

64CSR13

3.2.a.7. Residential Board and Care Homes, as defined under W. Va. Code ' 16-5H-2, or similar places that furnish to their guests only room and board;

3.2.a.8. Extended care facilities operated in conjunction with a hospital;

3.2.a.9. Facilities, including intermediate care facilities for the mentally retarded required to be licensed under W. Va. Code ' 27-9-1;

3.2.a.10. Personal Care Homes as defined under W. Va. Code ' 16-5D-2;

3.2.a.11. Residential Care Communities as defined under W. Va. Code ' 16-5N-2; and

3.2.a.12. Homes or asylums operated by fraternal orders pursuant to W. Va. Code ' 35-3-1 et seq.

3.2.b. The care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin, to the head of the household, or his or her spouse, does not constitute a nursing home within the meaning of this rule.

3.3. Initial License.

3.3.a. An applicant shall submit an application to the director, on a form prescribed by the director, containing information sufficient to demonstrate that the nursing home is in compliance with the standards for nursing homes established in W. Va. Code ' 16-5C-1 et seq., and this rule.

3.3.b. The application shall be filed not less than thirty (30) days and not more than ninety (90) days prior to the date proposed for commencement of operation.

3.4. Renewal License.

3.4.a. An applicant for a renewal license shall submit an application to the director on the form prescribed by the director.

3.4.b. A completed application for renewal of a license shall be submitted not less than thirty (30) days and not more than ninety (90) days prior to the expiration date of the current license.

3.4.c. The fee for renewal of a license, as determined by the director pursuant to W. Va. Code ' 16-5C-6(e), shall accompany the license renewal application.

3.4.d. The director shall renew an original license when the following conditions are met:

3.4.d.1. The director finds the nursing home in substantial compliance with the provisions of W. Va. Code ' 16-5C-1 et seq., and with this rule;

3.4.d.2. The licensee applied for a renewal within the time period specified in this subsection; and

3.4.d.3. The licensee submitted the correct renewal fee with the application.

3.4.e. A renewal license is valid for one (1) year from the date of issuance.

3.5. Provisional License.

3.5.a. If the director finds that a nursing home applying for renewal of a license is not in substantial compliance with the requirements of this rule and the provisions of W. Va. Code '16-5C-1 et seq., the director may, at his or her discretion, issue a provisional license.

3.5.b. A provisional license may be issued only when the director makes the following findings:

3.5.b.1. That the care given in the nursing home does not pose a substantial threat to the health and safety of residents; and

3.5.b.2. That the nursing home has demonstrated improvement and potential for substantial compliance within the term of the license for which renewal is requested.

3.5.c. A provisional license shall not be issued for a period greater than six (6) months.

3.5.d. No extensions or renewals shall be granted on provisional licenses.

3.6. Inspections of Licensed and Unlicensed Facilities.

3.6.a. Before licensing a nursing home, the director shall inspect the nursing home.

3.6.b. The director shall conduct at least one (1) unannounced inspection annually, or in accordance with Section 17 of this rule on deemed status of a licensed nursing home, to determine compliance with the provisions of W. Va. Code '16-5C-1 et seq., and this rule.

3.6.c. In accordance with W. Va. Code '16-5C-9, the director or designee has the right to enter the premises of a nursing home that the director has reason to believe is being operated or maintained as a nursing home without a license.

3.6.d. If the owner or person in charge of an unlicensed nursing home refuses entry pursuant to this subsection, the director shall apply to the circuit court of the county in which the nursing home is located or in the circuit court of Kanawha County for a warrant authorizing inspection.

3.6.e. If the director finds, on the basis of the inspection, that the nursing home is operating as a nursing home without a license, the nursing home shall apply for a license within ten (10) days in accordance with the provisions of this rule or shall reduce the number of residents to three (3) or fewer.

3.6.f. A nursing home which fails to apply for a license is subject to the penalties established in Sections 15 and 16 of this rule.

3.6.g. The director shall file an inspection report according to this rule and shall keep the report on file for five (5) years.

3.6.h. An inspection report shall list each deficiency in the nursing home's compliance with statutes and rules, indicating for each deficiency specifically which provision has not been met.

3.6.i. The director shall send a copy of the report of an inspection to the nursing home.

3.7. License; Posting; Licensed Capacity.

64CSR13

3.7.a. The owner shall post the license in a conspicuous place on the licensed premises.

3.7.b. The department on behalf of the State of West Virginia shall maintain ownership of each license certificate issued to a licensee; upon the suspension or revocation of the license, or upon discontinuing operation of the home by voluntary action of the licensee, the owner shall return each license certificate to the director immediately.

3.7.c. The number of residents in a nursing home may not at any time exceed the licensed capacity of the home as shown on the license.

3.7.d. Emergency. A request for temporary authority to exceed the licensed capacity may be made to the director in the event of an emergency.

3.8. Change in Status Necessitating Discharge or Transfer of Residents.

3.8.a. Whenever a licensee plans to discontinue all or part of its operation or change its ownership or location, and the change in status would necessitate the discharge or transfer of residents, the administrator shall notify the director at least ninety (90) days prior to the proposed date of the change in status.

3.8.b. For licensees planning a change in status as described in Subdivision 3.8.a. of this Subsection:

3.8.b.1. This rule remains fully applicable until all residents have been discharged or transferred.

3.8.b.2. At least sixty (60) days prior to the date of the planned change in status, the administrator shall provide the director with a written transfer plan, subject to approval by the director. This plan shall include the following:

3.8.b.2.A. Documentation that adequate staff and resident care will be provided;

3.8.b.2.B. The licensee's arrangements to make an orderly transfer of residents and to minimize the health risks; and

3.8.b.2.C. The placement action proposed to be taken for each person resident.

3.8.b.3. The administrator, upon request, shall provide the licensing agency with any additional information related to the transfer plan as well as follow-up reports regarding specific placement action.

3.8.b.4. The licensee shall not admit new residents after the date of the written notice required in this Section.

3.9. Availability of Reports and Records.

3.9.a. The director shall make available for public inspection and, upon request, provide hard copies at a cost of twenty-five cents (\$0.25) per page or electronically at a nominal cost, of the following documents:

3.9.a.1. Applications and exhibits;

3.9.a.2. Inspection reports;

3.9.a.3. Reports of investigations conducted in response to complaints; and

64CSR13

3.9.a.4. Any other reports filed with or issued by the director pertaining to the compliance of a nursing home with applicable laws, and rules.

3.9.b. If the director determines it is in the best interest of the public, the director may provide copies of records and reports free of charge to nonprofit community organizations upon written request.

3.9.c. The director shall treat a report of inspection of a nursing home as public information from the time an acceptable plan of correction is submitted.

3.9.d. If the nursing home does not submit a written plan of correction within the time specified by the director pursuant to Section 16 of this rule, reports pertaining to the nursing home shall be made public at the expiration of the specified time.

3.9.e. Other records and reports shall be treated as public information from the time they are submitted to or issued by the director.

3.9.f. Nothing contained in this Section shall be construed to require or permit the public disclosure of confidential medical, social, personal or financial records of any resident.

3.9.g. Before releasing a report or record considered to be public information, the director shall delete any confidential information regarding a resident that reasonably permits identification of the resident.

3.9.h. The director shall delete from complaints made available to the public under this Section any information required to be held confidential under subdivision 4.4.e. of this rule.

3.10. Nursing Home Licensing Advisory Council.

3.10.a. The director shall establish a licensing advisory council composed of licensed nursing home administrators, representatives of appropriate government agencies and consumers.

3.10.b. The composition of the council shall be determined by the director and be comprised of no less than ten (10) members and no more than fifteen (15) members.

3.10.c. The purpose of the council is to make recommendations to the director about regulatory issues and improvement of nursing home services.

3.10.d. The council shall hold a meeting not less than semiannually, at least one (1) of which shall be held in a public setting and receive input from the public.

3.11. Transfer Agreements.

3.11.a. The nursing home shall have in effect a transfer agreement with one (1) or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures:

3.11.b. Timely admission of a resident to the hospital when transfer is medically appropriate as determined by a physician; and

3.11.c. Medical and other information needed for care and treatment of residents is exchanged between the institutions.

3.12. Interpretive Guidelines.

3.12.a. The department may issue interpretive guidelines related to this rule and prior to the adoption and implementation of the guidelines, shall provide notice of a public comment period to all affected parties.

'64-13-4. Residents= Rights.

4.1. Nursing Home Policies and Procedures.

4.1.a. The governing body of a nursing home shall establish written policies and procedures regarding the rights and responsibilities of residents. The policies adopted shall be consistent with the provisions of this rule.

4.1.b. Through the administrator, the governing body is responsible for on-going development of and adherence to procedures implementing policies regarding the rights and responsibilities of residents.

4.1.c. A nursing home shall make its policies and procedures available upon request to:

4.1.c.1. Residents or potential residents; and

4.1.c.2. Legal representatives.

4.2. Duties of Staff.

4.2.a. All members of the nursing home staff shall ensure that every resident under their care is accorded all rights set forth in Sections 4 and 5 of this rule.

4.2.b. The nursing home staff shall at least annually receive training from or approved by the Department in the proper implementation of residents= rights policies under Paragraph 11.5.c.4 of this rule.

4.2.c. When the nursing home staff limits or restricts the rights of a resident for medical reasons, the staff will document the specific reasons for the limitation or restriction in the resident=s medical record, and the specific period of time the limitation or restriction will be in place. The resident or the resident=s legal representative shall authorize the limitation or restriction in writing.

4.3. Rights of Legal Representatives.

4.3.a. The rights and obligations established under this rule devolve to a resident=s legal representative if, in accordance with applicable State law, the resident lacks capacity to exercise his or her rights and obligations.

4.3.a.1. If a legal representative has been appointed for, or designated by, any resident as having the authority to exercise on behalf of the resident one or more of the resident=s rights under this rule, the nursing home shall afford the legal representative the full opportunity to exercise that authority.

4.3.a.2. A legal representative shall exercise his or her authority in conformance with State and federal law.

4.3.a.3. Nothing in this rule shall in any way be construed to diminish or deprive any person of any rights other than specifically provided in this rule.